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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,  
JEREMY DAVIS, CHRISTOPHER  
CASTILLO, and MONIQUE TRUJILLO,  
individually and on behalf of all similarly  
situated,

Plaintiffs,

v.

GOOGLE LLC,  
Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S OPPOSITION TO  
PLAINTIFFS' ADMINISTRATIVE  
MOTION TO SUPPLEMENT THEIR  
SANCTIONS MOTION (DKT. 583)**

Hon. Susan van Keulen, USMJ

1 Plaintiffs' request for leave to file a supplement to the sanctions motion purportedly because  
2 Google provided "material" after the April 21, 2022 hearing is baseless and should be  
3 denied. Plaintiffs do not cite a single relevant fact contained in the allegedly "belatedly produced  
4 information" that is new or absent from the already exhaustive sanctions record before the Court.

5 **First**, the supplemental interrogatory response Plaintiffs base their request upon did not  
6 include additional facts. Google merely incorporated basic information well known to Plaintiffs  
7 and the Court from the existing record for the motion for sanctions. Plaintiffs already submitted  
8 initial briefing, supplemental briefing, and cross-examined four Google witnesses regarding these  
9 very facts. They cannot credibly paint Google's formal interrogatory response as an attempt to  
10 "backfill with self-serving assertions" (Dkt. 582-4) where they have known about this information  
11 for months and have even questioned witnesses on it.

12  
13 **Second**, Plaintiffs inexplicably seek to preclude Google from relying on the declaration of  
14 Dr. Harting in support of Google's Response to Plaintiffs' Objections to the Special Master's Report  
15 (Dkt. 559) regarding preservation obligations, which was submitted in an entirely different context  
16 from the sanctions briefing. The declaration mentions the "maybe\_chrome\_incognito" bit in a  
17 single paragraph to substantiate the burden associated with preserving the logs that contain the field,  
18 which Plaintiffs sought in the context of the preservation dispute. This is unrelated to the sanctions  
19 motion.  
20

21 **Third**, Plaintiffs attempt to manufacture controversy by contrasting Dr. Harting's declaration  
22 with Mr. Golueke's testimony at the sanctions hearing. *Id.* However, there is no  
23 inconsistency. Plaintiffs' own briefing makes clear that Mr. Golueke testified he performed  
24 diligence before signing his November 18 declaration by speaking to individuals from the Analytics  
25 and Ad Manager Teams. Apr. 21, 2022 Hr'g Tr. 189:1-8. By contrast, Dr. Harting's later  
26 declaration repeats information Plaintiffs already have, including through the declaration of Bert  
27  
28

1 Leung filed with Google’s response to Plaintiffs’ sanctions motion on April 5, 2022; namely, that  
2 the “maybe\_chrome\_incognito” bit is stored in certain specific logs. Dkt. 527-12. The only new  
3 information in the Harting Declaration is the burden associated with preserving the logs containing  
4 the field wholesale. Clearly, this information does not undermine Mr. Golueke’s testimony cited by  
5 Plaintiffs (*i.e.* that he spoke with individuals on the Analytics and Ad Manager Teams) or otherwise  
6 reflect on the extent of his diligence in any way.  
7

8 ***Last***, Plaintiffs purposefully avoided adequate notice to and conferral with Google regarding  
9 a potential stipulation that might have resolved the need for the instant motion. *See* Local Rule 7-  
10 11. Plaintiffs gave Google three hours to formulate a position on their request for leave. Fortenbery  
11 Decl. ¶ 3. Google requested until the end of the day to confer internally, but Plaintiffs never  
12 responded, and instead simply filed their administrative motion. *Id.* ¶¶ 4-5.  
13

14 Had Plaintiffs provided Google a reasonable time to respond, Plaintiffs would have been  
15 aware that Google is willing to amend the supplemental interrogatory response to remove the  
16 narrative response and instead incorporate by reference the relevant sanctions briefing and  
17 testimony. This would have fully addressed Plaintiffs’ concerns and also made clear nothing new  
18 is being added to the record.

19 In short, Plaintiffs have identified nothing to justify yet another supplemental brief in support  
20 of their motion for sanctions. Nor is the substantive relief they seek—precluding Google’s reliance  
21 on the Interrogatory response and the Harting Declaration—warranted in light of their submission.  
22 Google’s supplemental interrogatory response provides no more than a general description of what  
23 is already known to Plaintiffs and the Court through the sanctions briefing and hearing  
24 testimony. The declaration of Mr. Harting goes to a wholly different part of the case and only  
25 tangentially discusses the “maybe\_chrome\_incognito” bit in a single paragraph. Plaintiffs’ motion  
26 should be denied.  
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1  
2 DATED: May 19, 2022

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4 By /s/ Andrew H. Schapiro

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